

#14



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application:

Morris E. Lewis

Attorney Docket: LEWIS

Application Number: 09/339,059

Art Unit: 2165

Examiner: Nicholas D. Rosen

For: METHOD, APPARATUS AND PROCESSES FOR MANUAL,  
AUTOMATIC OR REMOTE ONLINE PURCHASING AND LOCAL,  
REGIONAL AND INTERNATIONAL OVER THE COUNTER PURCHASING  
WITH REBATE, SAVING, AND INVESTING PROCESSES

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT  
BASED ON FAILURE TO TIMELY FILE A PROPER REPLY**

Honorable Commissioner of Patents and Trademarks,

Washington, D.C. 20231

In response to the Notice of Abandonment, mailed December 19,  
2002 and In accordance with MPEP Rules 711.03© II, and 711.04 ©, I  
respectfully request that the Examiner Withdraw The Holding Of  
Abandonment Based On Failure to Timely File A Proper Reply.

Sincerely yours,

MORRIS E. LEWIS

APPLICANT

301-899-8925

RECEIVED  
JAN 23 2003  
GROUP 3000

I am a Pro-Se applicant and it was my understanding that "Extension Fees" were fifty-five dollars (\$55.) per month, thus, I made payments based upon my mistaken belief. Abandoning My Application, I very strongly feel is an awfully high price to pay for making a simple mistake.

In the, Interview Summary of the Notice of Abandonment, (shown below) Mr. Rosen states that he "left several messages for Mr. Lewis at 301-899-8925, until receiving an automated response that the memory was full. Examiner Rosen called to say that the case unfortunately gone abandoned"

"Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Examiner Rosen left several messages for Mr. Lewis at 301-899-8925, until receiving an automated response that the memory was full. Examiner Rosen called to say that the case unfortunately gone abandoned; Examiner Rosen's supervisor had determined that nothing could be done about it, except that Mr. Lewis could petition to have it revived. A petition on the grounds that the abandonment was unavoidable would be cheaper than one on the grounds that the abandonment was unintentional. Examiner Rosen suggested that in view of the problems with the specification, and the narrowness of the subject matter found potentially allowable, a petition to revive did not appear to him to be a good investment, but that was Mr. Lewis's decision. Mr. Lewis was invited to call at 703-305-0753 if he wished to discuss the case."

During the period of time the telephone calls were made, I was out of the country. And, in view of my history of promptly returning all of Mr. Rosen's telephone calls, there should have been concern that something was not normal and further consideration

warranted. I believe the haste to "Abandon the Application" was unfair and I should have been given further consideration before the determination of abandonment.

In the first Office Communication on this Application, I had allowable claims. Yet in Mr. Rosen's statement (above), he advised that "a petition for revival did not appear to be a good investment." I am confused, why am I being encouraged to drop the application when there has been nothing to show that I am not due a Patent.

Further, the Office Communication (Office Action) that lead to this Notice Of Abandonment was a telephone call that I could not answer because I was out of the country.

Case Law shows (Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), that "an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment". Also "If adequately supported, the Office may grant the petition to withdraw the holding of abandonment, That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133)."

Therefore, in view of the prior court ruling on a matter such as this, and my honest mistake on the Extension Fees, coupled with the fact that I have paid the difference in the Extension Fee paid and that which is due, I beg that you withdraw the holding of abandonment.